D. C. Jackson (Senior Federal Counsel) for the respondent.

Spenser Wilkinson J. : —The appellant was convicted in the Magistrate's Court upon a charge that in a declaration made before a Justice of the Peace he made a false statement touching a point material to the object for which the declaration was made contrary to Section 199 of the Penal Code. The main grounds of appeal were that the declaration, the subject matter of the charge, was not in accordance with or in the form prescribed by the Declarations Ordinance, 1949; and that the essential parts of the declaration were not translated to the appellant and he was not asked to declare the same.

With regard to the first point it is quite clear that the important words:—

"Declared at.....this.....day of..... before me."

are absent from the declaration, and it is equally clear that when the appellant was before the Justice of the Peace although he signed the declaration he never declared it.

The result of this is in my opinion that this was not a declaration which any Court was bound or authorised by law to receive as evidence of any fact and was, therefore, not a declaration within the meaning of Section 199 of the Penal Code. In the case of *Velumailum v. Public Prosecutor*[1] Laville J. held that the omission of the words "and by virtue of the Statutory Declarations Enactment" was vital. The omission of the words "Declared at etc.," from the declaration in this case was in my opinion equally fatal. Moreover, I am satisfied that it is not sufficient for a declarant simply to sign the declaration; he should actually declare it before the Justice of the Peace or Commissioner for Oaths before whom it is to be declared.

The learned Deputy Public Prosecutor conceded that in the circumstances of this case he could not resist the appellant's contention that no declaration was made. The result in my opinion is the same as that in *Velumailum's* case that although the statement was wilfully false it is not criminally punishable.

For these reasons I allowed the appeal and quashed the conviction and the accused was acquitted and discharged.

Appeal allowed.

Solicitors for the appellant: *Hogan, Adams & Allan.*

Re LAI AH SEN (m.w.)

[O.C.J. (Spenser Wilkinson J.) February 21, 1955]
[Penang—Bankruptcy No. 17 of 1954]

Bankruptcy — Married woman having separate property at time of contracting debt upon which judgment is based — Whether Receiving and Adjudication Orders can be made where there is a present lack of assets.

This was an application by the Official Assignee that the Receiving and Adjudication Orders made against the bankrupt in this case be rescinded and annulled respectively on the ground that the debtor had no assets of any kind. The Official Assignee relied on the case of Re Manickam Ammal (1).

Held: (1) as the bankrupt in this case had separate property at the time when she contracted the debt upon which the judgment is based, the decision in Re Manickam Ammal (1) did not apply; (2) the fact of present lack of assets was not a sufficient ground for annulment of the Adjudication Order because after-acquired property could pass to the Official Assignee except in so far as it was necessary to be used for the debtor's maintenance.

Case referred to:—

(1) *Re Manickam Ammal (w.)* (1938) M.L.J. 88; (1938) S.S.L.R. 181 distinguished.

BANKRUPTCY APPLICATION.

Balwant Singh (Asst. Official Assignee) for the Official Assignee.

M. Knorpel for the petitioning creditor.

Cur. Adv. Vult.

Spenser Wilkinson J. : —This was an application by the Official Assignee that the Receiving and Adjudicaton Orders made against the bankrupt in this case be rescinded and annulled respectively.

The Assistant Official Assignee based his application on the fact that the statement of affairs shows that the debtor has no assets of any kind and that it is not possible to prove that she has any property and that there is, therefore, nothing to administer. It is suggested that for these reasons the bankruptcy should be annulled. He relied on the case of *Re Manickam Ammal (w.)*[1].

I do not think it necessary to go into the difficult questions involved in that case. In my opinion it is sufficient to point out that the case now before me is clearly distinguishable from that case. In *Manickam Ammal's* case the widow possessed no separate property during coverture and it is clear that the judgment in that case was largely based upon that fact.

In the present case it is clear that the bankrupt did have separate property at the time when she contracted the debt upon which the judgment is based. The decision in the case of *Manickam Ammal,* therefore, does not apply. I do not think the present lack of assets is a sufficient ground for annulment because after-acquired property passes to the Official Assignee except in so far as it is necessary to be used for the debtor's maintenance. I am unable to see any other reason why the bankruptcy should be annulled, and the application is, therefore, dismissed.

Application dismissed.

Solicitors for the petitioning Creditors: *Lim, Lim & Oon.*